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U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In re:

THE CATHOLIC BISHOP OF SPOKANE)  
a/k/a THE CATHOLIC DIOCESE OF )  
SPOKANE, a Washington )  
corporation sole, )  
Debtor. )

No. 04-08822-PCW11  
Chapter 11

MICHAEL SHEA,

Plaintiff,

vs.

THE CATHOLIC BISHOP OF SPOKANE)  
a/k/a THE CATHOLIC DIOCESE OF )  
SPOKANE, a Washington )  
corporation sole, )  
Defendants. )

Adversary No. A04-00291-PCW

MEMORANDUM DECISION RE:

- 1) PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (#40)
- 2) DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT (#62)
- 3) DEFENDANT'S MOTION TO DISMISS (#64)

This adversary proceeding was commenced on December 22, 2004, approximately three weeks after the commencement of the Chapter 11 case. The plaintiff holds a disputed unliquidated claim arising from childhood sex abuse suffered by plaintiff. The abuser was a priest associated with the defendant and allegedly the negligent acts of the defendant allowed the abuse to occur. The Complaint names only the debtor as a defendant but alleges that all real and personal property held by parishes and other members of the diocesan family is property of the bankruptcy estate under

MEMORANDUM DECISION RE: . . . - 1

1 11 U.S.C. § 541 and thus subject to claims of creditors. The legal  
2 issues in this adversary proceeding are nearly identical with  
3 those in the adversary proceeding *Committee of Tort Litigants v.*  
4 *The Catholic Diocese of Spokane, et al.*, Adversary No. 05-80038-PCW  
5 (hereinafter "Related Adversary").

6 I.

7 PROCEDURAL HISTORY

8 On April 28, 2005, the plaintiff filed a Motion for Summary  
9 Judgment identifying 21 parcels of real property (hereinafter  
10 "Disputed Real Property") for which the deeds reflect fee simple  
11 title held by the Diocese.<sup>1</sup> Plaintiff seeks a determination that  
12 those parcels constitute property of the estate which is contrary  
13 to debtor's assertion that it holds only bare legal title. The  
14 debtor has asserted in its Schedules that the Disputed Real  
15 Property and other real and personal property is held for the  
16 benefit of the parishes or other members of the diocesan family.

17 On May 27, 2005, the defendant filed a Motion to Dismiss  
18 alleging that the plaintiff has no standing to bring this action  
19 under Fed. R. Bank. P. 7012(b), which incorporates Fed. R. Civ. P.  
20 12(b)(1) and (6). Defendant contends that no case or controversy  
21 exists, thus the Court lacks subject matter jurisdiction. On the  
22 same day, the debtor filed its Cross-Motion for Summary Judgment  
23 with supporting brief. The hearing on those dispositive motions  
24 occurred June 27, 2005 simultaneously with the hearing in the  
25 Related Adversary.

26 \_\_\_\_\_  
27 <sup>1</sup>The plaintiff's Motion for Partial Summary Judgment in the  
28 Related Adversary involves the same 21 parcels of real estate plus  
an additional parcel.

1 II.

2 DEFENDANT'S MOTION TO DISMISS

3 The defendant firstly seeks dismissal on the basis that the  
4 plaintiff did not file a response to the defendant's Motion to  
5 Dismiss filed on May 27, 2005. The Scheduling Order previously  
6 entered in this proceeding required plaintiff to file its response  
7 to any jurisdictional motions by June 10, 2005. (Scheduling Order,  
8 Adversary Docket No. 52). The plaintiff filed a memorandum of  
9 authorities on June 10, 2005 which was captioned as a response to  
10 defendant's Motion for Summary Judgment and also states it is a  
11 reply to defendant's response to the plaintiff's initial Motion for  
12 Summary Judgment. It was not designated as a reply to the  
13 defendant's Motion to Dismiss. The memorandum of authorities  
14 does, however, in a rather oblique manner, discuss the arguments  
15 raised in the Motion to Dismiss. The defendant did not file a  
16 memorandum of authorities or other pleading designated as a reply  
17 to the plaintiff's initial Motion for Summary Judgment.

18 A Motion to Dismiss with the same legal issues was filed in  
19 the Related Adversary by defendant in that proceeding with all  
20 issues fully briefed and addressed in that case. The motions in  
21 this proceeding rely in part upon declarations filed in the Related  
22 Adversary and refer to memorandums of authority filed in that  
23 adversary. At oral argument, it was apparent that all the parties  
24 in both cases had divided oral argument of the common issues  
25 without distinguishing between the two adversary proceedings. This  
26 was a proper manner in which to proceed, was efficient, and did not  
27 harm or prejudice any party as no party was surprised by the  
28 advancement of a new legal argument.

MEMORANDUM DECISION RE: . . . - 3

1 In reality, both parties have combined all arguments in  
2 several responsive briefs and memoranda filed since the May 11,  
3 2005 Scheduling Order. Neither party should be penalized for the  
4 fact that there may be no specific pleading captioned as a specific  
5 response to a specific motion so long as all the issues have been  
6 addressed.

7 III.

8 FED. R. CIV. P. 12(b)(6) STANDING ISSUE

9 Secondly, the defendant seeks dismissal on jurisdictional  
10 grounds. The standing issue presented in this adversary differs  
11 slightly from the very similar standing issue presented in the  
12 Related Adversary. The plaintiff in that Related Adversary is an  
13 officially appointed Tort Litigants' Committee (hereinafter "TLC")  
14 composed of several individuals who, as did the plaintiff in this  
15 proceeding, suffered childhood sex abuse by a priest. The members  
16 of the TLC had commenced various law suits against the debtor for  
17 damages pre-petition. The TLC was formed February 2, 2005,  
18 approximately a month and a half after the commencement of this  
19 adversary. (Appointment of Committee of Tort Litigants in a  
20 Chapter 11 Reorganization Case, Main Case Docket No. 206). At the  
21 same time as the TLC was formed, the original Tort Claimants'  
22 Committee (hereinafter "TCC") was reconstituted to include only  
23 claimants who had suffered childhood sex abuse but had not  
24 commenced litigation pre-petition. (Reconstitution of and  
25 Appointment of Committee of Tort Claimants in a Chapter 11  
26 Reorganization Case, Main Case Docket No. 205). After it was  
27 appointed, the TCC sought to intervene in this adversary and the  
28 Related Adversary. The intervention was denied. Thus, the

1 analysis of standing differs slightly in this adversary from the  
2 analysis in the Related Adversary in which the plaintiff is an  
3 officially appointed Creditors' Committee.<sup>2</sup>

4 The debtor argues that plaintiff has no standing to pursue  
5 this litigation as the Bankruptcy Code does not authorize the  
6 plaintiff to do so and because no case or controversy exists.

7 **A. Standing Under the Code.**

8 The Diocese contends that standing does not exist under the  
9 Bankruptcy Code. It relies on *Hartford Underwriters Ins. Co. v.*  
10 *Union Planters Bank, N.A.*, 530 U.S. 1, 120 S.Ct. 1942, 147 L.Ed.2d  
11 1 (2000) for its conclusion that the plaintiff lacks standing to  
12 commence this adversary proceeding.

13 The discussion of this contention in the Related Adversary is  
14 applicable in this case. Although plaintiff herein is a single  
15 claimant rather than an officially appointed creditors' committee,  
16 the rationale for allowing creditors to dispute a debtor's  
17 identification of property of the estate is the same.

18 Plaintiff has standing under the Bankruptcy Code.

19 **B. Lack of Subject Matter Jurisdiction.**

20 The Motion to Dismiss also raises jurisdictional issues  
21 relating to standing. The Diocese seeks dismissal as (a) this is  
22 a non-core proceeding, and (b) the Court lacks subject matter  
23 jurisdiction because there is no case or controversy; and (c)  
24 because the constitutional requirements for standing have not been  
25

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26  
27 <sup>2</sup>Court records reflect that the plaintiff herein is a member  
28 of the TLC. No one has raised an issue relating to the right of a  
single member of an officially appointed committee to maintain an  
adversary proceeding independently of the committee as a whole.

1 met.

2 These issues are also the basis of a Motion to Dismiss by  
3 certain non-debtor defendants in the Related Adversary. The issues  
4 were analyzed in the decision rendered in the Related Adversary.  
5 The fact that this plaintiff is an individual creditor rather than  
6 an officially appointed creditors' committee does not meaningfully  
7 change the analysis nor the conclusion. The plaintiff has a  
8 pecuniary interest in this dispute regarding identification of the  
9 property of the bankruptcy estate.

10 The plaintiff has demonstrated that a case or controversy  
11 exists and he has standing under the federal Constitution.

12 IV.

13 THE PLAINTIFF'S AND DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

14 The plaintiff seeks a determination that as a matter of law  
15 the Disputed Real Property is property of the estate. The  
16 defendant seeks a determination as a matter of law that all  
17 property of the parishes or other members of the diocesan family is  
18 not property of the estate. The legal issues relating to the  
19 applicability and analysis of 11 U.S.C. § 541 mirror those in the  
20 Related Adversary.<sup>3</sup>

21 Rather than repeating the analysis of each issue presented,  
22 this decision will simply repeat the conclusions. The rationale  
23 for these conclusions is contained in the decision entered this  
24 same date in the Related Adversary.

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25  
26  
27 <sup>3</sup>In this adversary, there is no contention that the doctrine  
28 of judicial estoppel is applicable. Nor are the individual  
parishes and other members of the diocesan family named as  
defendants.

1. Application of state civil law under 11 U.S.C. § 541 to determine the nature and extent of debtor's interest in property does not violate the First Amendment. Nor does the application of § 541 to define property of the estate violate the First Amendment.

2. All Disputed Real Property is held in the name of the Bishop for the benefit of the Diocese. The debtor has all equitable and beneficial interest in all such property.

Plaintiff's Motion for Summary Judgment is **GRANTED** and defendant's Cross-Motion for Summary Judgment and Motion to Dismiss is **DENIED**.

DATED this 26<sup>th</sup> day of August, 2005.

*Patricia C. Williams*  
PATRICIA C. WILLIAMS  
Bankruptcy Judge